

**TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE**



**FISCAL NOTE**

**HB 769 - SB 911**

March 20, 2017

**SUMMARY OF BILL:** Requires a contested case proceeding to be commenced on appeal within 60 days of the action against the appellant. Requires administrative judges or hearing officers to furnish the appellant the case schedule for the day of the appellant's case, at least seven days prior to the day of the appeal being heard.

Requires agency proceedings for contested cases involving a professional or occupational license revocation, suspension, or withdrawal, to have all testimony provided given under oath, the person who alleges misconduct by the licensee or license applicant to be physically present and available to testify, a roll call vote taken if requested, and any decision made in such contested case to be posted to the agency's website. Awards attorney fees, court costs, pre-judgement interest, post-judgement interest, and lost wages to the licensee or license applicant, if the decision of the agency to revoke, suspend, or withdraw a license is overturned.

Requires, rather than authorizes, the award of reasonable expenses including attorney fees, against certain state agencies issuing a citation to a person, local government entity, board or commission for violation of a rule, regulation, or statute, when a hearing officer or administrative judge finds the citation was issued without warrant or for an improper purpose such as to harass.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures – Exceeds \$64,200/One-Time  
\$443,000/Recurring**

**Increase Federal Expenditures – Exceeds \$64,200/One-Time  
\$800,100/Recurring**

**Other Fiscal Impact -** The provisions of the legislation could jeopardize federal funding if it is determined the state is noncompliant with federal law. TennCare reports the requirement to provide seven days advance notice of all appeal dockets will place the Agency in noncompliance with federally mandated appeal schedules. Federal funding totaling \$7,163,104,200 could be in jeopardy.

**Due to multiple unknown variables, a precise increase in state expenditures for licensure appeals which are overturned cannot reasonably be determined;**

**however, it is reasonably estimated that the provisions of the legislation could increase state expenditures by amounts estimated to exceed \$3,000 per case paid from various dedicated funds.**

**Due to multiple unknown factors, a precise increase in state expenditures for issuance of awards from appeals of citations issued by state agencies cannot be determined; but it is reasonably estimated to be \$300 per case, paid from various dedicated funds, dependent upon the citation-issuing agency.**

Assumptions related to appeals of contested cases:

- According to TennCare, extending the period of time provided to persons to file for appeal for contested cases will result in an increase in expenditures for the agency.
- Currently, individuals involved in cases of eligibility have 40 days to appeal, medical services cases have a period of 30 days to appeal, and the pre-admission evaluation appeal period is 35-40 days.
- TennCare will be required to update 107 letter templates currently utilized by the agency to reflect the 60-day timeframe for filing an appeal.
- These templates are required to include information on adverse action and include appeals language; thus, such information will have to be updated to reflect the new 60 day time period for filing an appeal.
- Costs associated with updating one template is estimated to exceed \$1,200; therefore revising 107 templates will result in a one-time increase in expenditures exceeding \$128,400 (107 templates x \$1,200 per template). Such TennCare expenditures receive matching federal funds at a rate of 50 percent federal funds and 50 percent state funds; therefore, of the \$128,400, \$64,200 ( $\$128,400 \times 50.0\%$ ) will be state funds and \$64,200 will be federal funds.
- Increasing the period for filing an appeal for a contested case will result in an increased number of appeals being timely filed; and thus will increase the number of successful appeals with benefits or services being granted.
- There were 846 total appeals filed for Pre-Admission Evaluations (PAE) in 2016. Of those, 43 were untimely filed and thus denied.
- The success rate for timely filed PAE appeals was 47 percent; meaning 47 percent of the appeals filed were successfully appealed with services being granted.
- Assuming the 43 untimely PAE appeals would be considered timely under the provisions of the legislation and assuming the same success rate of 47 percent, 20 ( $43 \text{ appeals} \times 47\% \text{ success rate}$ ) additional PAE appeals would be successful; therefore, additional services or benefits would be granted.
- The average cost per year for services for a CHOICES participant within TennCare is \$56,087.
- Twenty additional successful PAE appeals will result in a recurring increase of \$1,121,740 ( $\$56,087 \text{ average cost of services per year} \times 20 \text{ successful appeals for services granted}$ ). TennCare receives matching federal funds for PAE expenditures at a rate of 65.605 percent federal funds, 34.395 percent state funds; therefore, for successful PAE appeals, the recurring increase in state expenditures is estimated to be \$385,822

- (\$1,121,740 total cost x 34.395%) and the recurring increase in federal expenditures is estimated to be \$735,918 (\$1,121,740 total cost x 65.605%).
- There were 39,417 total Medical Services (MS) appeals filed in 2016. Of those, 1,120 were untimely filed and thus denied.
  - The success rate for timely filed MS appeals was 10.8 percent; meaning 10.8 percent of the appeals filed were successfully appealed with services being granted.
  - Assuming the 1,120 untimely MS appeals would be considered timely under the provisions of the legislation and assuming the same success rate of 10.8 percent, 121 (1,120 appeals x 10.8% success rate) additional MS appeals would be successful; therefore, additional services or benefits would be granted.
  - The average cost of all claims paid throughout TennCare is \$187.
  - With 121 additional successful MS appeals there would be a recurring increase of \$22,627 (\$187 average cost per year x 121 successful appeals for services granted). TennCare receives matching federal funds for MS expenditures at a rate of 65.605 percent federal funds, 34.395 percent state funds; therefore, for successful MS appeals, the recurring increase in state expenditures is estimated to be \$7,783 (\$22,627 total cost x 34.395%) and the recurring increase in federal expenditures is estimated to be \$14,844 (\$22,627 total cost x 65.605%).
  - There will be an increase in administrative costs for TennCare associated with additional appeals progressing to a hearing, including, but not limited to, docket fees and court reporting costs. It is estimated that for each additional appeal which progresses to a hearing there will be addition fees of approximately \$2,000.
  - Assuming 35 percent of all additional appeals for services through TennCare progress to a hearing, it would result in a recurring increase in expenditures of \$98,700 [(20 PAE appeals + 121 MS appeals) x 35.0% x \$2,000 per hearing].
  - Such TennCare expenditures receive matching federal funds at a rate of 50 percent federal funds and 50 percent state funds; therefore, of the \$98,700, \$49,350 (\$98,700 x 50%) will be state funds and \$49,350 will be federal funds.

Assumptions related to total costs associated with appeals:

- The total one-time increase in state expenditures is estimated to be \$64,200 for TennCare template changes.
- The total recurring increase in state expenditures for additional services is estimated to be \$442,955 (\$385,822 state share for PAE appeals + \$7,783 state share for MS appeals + \$49,350 state share administrative costs).
- The total one-time increase in federal expenditures is estimated to be \$64,200 for TennCare template changes.
- The total recurring increase in federal expenditures for additional services is estimated to be \$800,112 (\$735,918 federal share for PAE appeals + \$14,844 federal share for MS appeals + \$49,350 federal share administrative costs).

Assumptions related to notification of docket schedule for appeals:

- The provisions of the legislation will require administrative judges and hearing officers to provide appellants with a schedule of cases set to be heard on the day of the appellant's case at least seven days prior to the hearing.
- According to TennCare, some cases are expedited due to a federally mandated schedule. Some expedited appeals are required to be resolved by the Agency within three days of receipt while other appeals have a mandated resolution timeline of seven days.
- Complying with state law to provide seven days advance notice would prevent compliance with federal mandates, and will thus jeopardize federal funds.
- According to TennCare, the Centers for Medicare and Medicaid Services (CMS) has the authority to withdraw all Federal Financial Participation (FFP) funds, totaling \$7,163,104,200 for noncompliance.

Assumptions related to awards:

- There are numerous agencies which issue professional and occupational licenses, including but not limited to the Department of Health, Department of Commerce and Insurance, Department of Education, and the Department of Financial Institutions.
- All such agencies would be subject to payment of attorney fees, court costs, pre and post judgement interest, and lost wages of a licensee or license applicant who prevails in a contested case against an agency for revocation, suspension, or withdrawal of the license.
- Due to multiple unknown factors such as, if a contested case regarding a license is brought against the issuing agency, if the licensee or license applicant prevails in the case, the extent of fees, interest, and wages that will be awarded, the wage of the licensee, the length of time the case is contested, and the fund from which any such fees, interest, and wages will be appropriated, a precise increase in state government expenditures cannot be determined; however, it is reasonable to assume that the proposed language will result in an increase exceeding \$3,000 per case, paid from various dedicated funds, dependent upon the licensing agency.
- There are numerous agencies which issue citations; due to many unknown factors such as how many contested cases that currently involve citations have prevailing plaintiffs; how many of such cases the plaintiff is awarded attorney fees and other expenses, the extent of any such award currently made, which citation issuing agency will be subject to a contested case, the length of the case, and the extent of fees which the agency will now be required to pay; a precise increase in state expenditures cannot reasonably be determined, but is reasonably estimated to exceed \$500 per case, paid from various dedicated funds, dependent upon the citation-issuing agency.

## **IMPACT TO COMMERCE:**

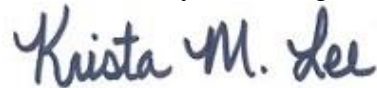
### **NOT SIGNIFICANT**

Assumption:

- The proposed language is applicable to contested cases between individuals licensed by agencies and the agencies providing the licenses. Any awards of fees or reinstatement of licenses would be on an individual basis; as a result, there will be no significant impact to commerce or jobs in Tennessee.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/jrh